

Subject: Student Data Privacy

Legal Reference: RSA 189:68, IV

This Technical Advisory provides information regarding the use of recordings in school classrooms.

RSA 189:68, IV, states: “No school shall record in any way a school classroom for any purpose without school board approval after a public hearing, and without written consent of the teacher and the parent or legal guardian of each affected student.”

The New Hampshire Department of Education appreciates that there are many reasons why educators would use or allow the use of recordings in classrooms. Some of these valuable uses include, but are not limited to:

- Recording classes when students are absent or unable to take notes;
- Student practice work in a photography and videography course;
- Recording a speech therapy session to evaluate a student’s progress;
- Creating a video presentation as part of any academic class;
- Videotaping student teachers for teacher education coursework;
- Videotaping a drama class (play) or music class to instructional purposes;
- Recording an awards presentation in a class that could be posted on the school/district website; and/or
- Instructional or assessment support for students with disabilities and/or students needing accommodations.

RSA 189:68 does not prohibit these uses. However, the law requires that prior to such recordings taking place, there must be a public hearing, followed by board approval. Additionally, written consent must be granted by all parents/legal guardians of affected students, as well as written consent from affected teachers.

At the same time, school districts must continue to follow the Individuals with Disabilities Education Act, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, ensuring that students who need to use and or participate in accommodations (i.e. recordings) for educational purposes per their Individual Education Plan (IEP) or 504 plan, continue to have that ability. IEP or 504 Teams – that include parents – determine if recordings are necessary for the delivery of a free appropriate public education (FAPE) or to access an educational program.

Additionally, this law does not affect recordings outside of a classroom setting.

For recordings within the classroom setting that are not for the purposes of supporting students that require supports and/or accommodations, the NH Department of Education recommends the following:

If a teacher (or other school district personnel) or student intends to video and/or audio record the classroom, the teacher and parent/legal guardian of every student affected by this record must consent to being recorded, prior to the recording occurring. This could be accomplished by providing a detailed letter (with approval signature requested) to parents and teachers regarding all possible scenarios (such as those listed above) for recordings. This can also be accomplished through the district’s annual FERPA Annual Notice and student handbook processes, where appropriate. Please keep in mind, however, the law requires written consent of a parent/legal guardian.

Further, all possible scenarios for recordings must be brought before the school board to request approval. A public hearing must occur before the school board vote. It is recommended that general approval for the district's use of recordings for the purposes of meeting the requirements in students' IEP or 504 plans can be accomplished all at once (instead of by individual child) to protect the privacy of individual students.

Notwithstanding current New Hampshire law, federal law as it applies to students' IEPs and 504 plans must be followed until the required approval is obtained.

NOTE: All districts should consult with their local attorney to develop local policies regarding this law.